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10/624,304	07/22/2003	Masafumi Matsuda	S01459.70053.US	7805
<div>7590 12/28/2007</div> <div>Randy J. Pritzker Wolf, Greenfield & Sacks, P.C. 600 Atlantic Avenue Boston, MA 02210</div>				
			EXAMINER	
			LY, ANH	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Alt

Office Action Summary	Application No. 10/624,304	Applicant(s) MATSUDA ET AL.	
	Examiner Anh Ly	Art Unit 2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10 and 18-38 is/are pending in the application.
 4a) Of the above claim(s) 7 and 11-17 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-6, 8-10 and 18-39 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08/23/2007</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is response to Applicants' AMENDMENT and filed RCE on 06/31/2007.

Response to Arguments

2. Applicant's arguments filed 10/24/2007 have been fully considered but they are not persuasive.

Applicant argued that "neither of the cited references recites a portable terminal comprising a reproduction unit, control unit and communication unit meeting the limitations of amended claim 1." (pages 14-16, 2nd paragraph, in the remarks).

Examiner respectfully disagrees as argued. In response to Applicants arguments, Moriai teaches portable terminal devices such as cellular phones (see fig. 1; distribution server, first cellular phone and second cellular phone, data processing apparatuses for receiving and transmitting data or music data from distribution server) for receiving, transmitting, reproducing, and controlling the music content and reproducing a plurality of music content data items and controlling and detecting reproduction status of music content data, selecting the music content data and transmitting or distributing the music content data (reproducing a plurality of music content data items: sections 0020 and 0024; each cellular phone has a control unit including detector unit for detecting reproducing processing including reproduction status of music content data item: sections 0024-0027, 0175 and 0180-0181; selecting or outputting the content of music from a cellular phone: sections 0097 and 0159-0161; and from fig. 1, distribution server

including data recording or reproducing device having a communicate unit for transmitting/distributing the music content data item to cellular phone: sections 0025, 0057 and 0060-0061).

Applicant argued that "Moriai says nothing at all relating to a portable terminal having a communication unit configured to transmit to another portable terminal." (page 14-16, 3rd paragraph, in the remarks).

Examiner respectfully disagrees as argued. In response to Applicants arguments, Moriai teaches portable terminal devices' network such as cellular phones' network. A network of a configuration of a data distribution system distributing digital music data to each cellular phone user on a cellular phone network, although, as will be apparent from the following description, the present invention is not limited thereto and it is also applicable to distributing content data corresponding to other types of creations, such as image data, animated image data, and the like. And it is also applicable to distribution on different information communication networks and a process of transmitting content data from distribution server to each cellular phone will be referred to as "distribution." (fig. 1 and sections 0025, 0051, 0057, 0072, 0081 and 0084).

For the above reasons, Examiner believed that rejection of the last Office action was proper.

3. The amendment was overcome the 35 U.S.C. § 101 and claimed subject matter not in specification.

4. The applied reference Takano (Pub. No.: US 2003/0191753) was withdrawn due to the provisional application no.; 60/371,111 filed on APR. 8, 2002 fails to provide support for the cited passages and figure.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "11-1 and 11-2" has been used to designate both in fig. 1 and fig. 12. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Also, in fig. 1, fig. 4, fig. 9, fig. 13, fig. 18, fig. 19 and fig. 20 are missing the "label" for the "boxes".

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the drawings must be shown or the feature(s) claimed subject matter in claims 1, 9, 10 and 18 (such as a reproducing unit, a control unit, a reproduction status ... a list which shows said selected recommended content data, ...). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-6, 8-10 and 18-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pub. No.: US 2002/0035692 A1 issued to Moriai in view of Pub. No.: US 2002/0082917 A1 issued to Takano.

With respect to claim 1, Moriai teaches a data processing apparatus (fig. 1, distribution server, first cellular phone and second cellular phone, data processing apparatuses for receiving and transmitting data or music data from distribution server), comprising:

a reproducing means unit configured to reproduce a plurality of content data items (reproduction unit: section 0024, reproducing a plurality of music content data items: : section 0020);

a control unit configured to detect a reproduction status of each content data item when said each content data item is reproduced by said reproducing unit (each cellular phone has a control unit including detector unit for detecting reproducing processing including reproduction status of music content data item: sections 0024-0027, 0175 and 0180-0181),

and to select content data item from said plurality of content data items depending on a reproduction status of said content data item (selecting or outputting the content of music from a cellular phone: sections 0097 and 0159-0161); and

a communication unit configured to transmit to another data processing apparatus (from fig. 1, distribution server including data recording or reproducing device having a communicate unit for transmitting/distributing the music content data item to cellular phone: sections 0025, 0057 and 0060-0061).

Moriai teaches reproducing a plurality of music content data items and controlling and detecting reproduction status of music content data, selecting the music content data and transmitting or distributing the music content data. Moriai does not clearly teach recommendation content data item and a list, which shows said selected content data item.

However, Takano teaches using portable terminal to view the selected content recommendation such as multimedia, image, video and audio including music content or data (sections 0088-0090; also sections 0020 and 0055).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Moriai with the teachings of Takano. One having ordinary skill in the art would have found it motivated to utilize the use of portable terminal to view the selected content recommendation information of multimedia such as image, vide or music, song as disclosed (Takano's sections 0088-0090), into the system of Moriai for the purpose of distributing methods for selecting the content recommendation over a portable terminal, thereby, enabling the user to

select/search and view the desired content over the network (Takano's sections 0002 and 0013).

With respect to claims 2-6, Moriai teaches the data processing apparatus as discussed in claim 1. Also, Moriai teaches wherein said control unit detects the content data item having been reproduced longer than a predetermined time period (sections 0020, 0084 and 0149).

Moriai teaches reproducing a plurality of music content data items and controlling and detecting reproduction status of music content data, selecting the music content data and transmitting or distributing the music content data. Moriai does not clearly teach recommendation content data item.

However, Takano teaches using portable terminal to view the selected content recommendation such as multimedia, image, video and audio including music content or data (sections 0088-0090; also sections 0020 and 0055).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Moriai with the teachings of Takano. One having ordinary skill in the art would have found it motivated to utilize the use of portable terminal to view the selected content recommendation information of multimedia such as image, vide or music, song as disclosed (Takano's sections 0088-0090), into the system of Moriai for the purpose of distributing methods for selecting the content recommendation over a portable terminal, thereby, enabling the user to select/search and view the desired content over the network (Takano's sections 0002 and 0013).

With respect to claim 8, Moriai teaches wherein said control unit searches for another data processing apparatus, and said communication unit transmits said list to said another data processing apparatus when said another data processing apparatus has been detected by said control unit (abstract, sections 0024-0027).

With respect to claim 9, Moriai teaches a data processing method for use with a data processing apparatus (fig. 1, distribution server, first cellular phone and second cellular phone, data processing apparatuses for receiving and transmitting data or music data from distribution server), the method comprising steps of:

reproducing a plurality of content data items (reproduction unit: section 0024, reproducing a plurality of music content data items: section 0020);

detecting a reproduction status of each content data item being reproduced (each cellular phone has a control unit including detector unit for detecting reproducing processing including reproduction status of music content data item: sections 0024-0027, 0175 and 0180-0181);

selecting a content data item being reproduced from said plurality of content data items depending on a detected reproduction status of said content data item (selecting or outputting the content of music from a cellular phone: sections 0097 and 0159-0161); and

transmitting content data item to a second data processing apparatus (from fig. 1, distribution server including data recording or reproducing device having a communicate unit for transmitting/distributing the music content data item to cellular phone: sections 0025, 0057 and 0060-0061).

Moriai teaches reproducing a plurality of music content data items and controlling and detecting reproduction status of music content data, selecting the music content data and transmitting or distributing the music content data. Moriai does not clearly teach recommendation content data item and a list, which shows said selected content data item.

However, Takano teaches using portable terminal to view the selected content recommendation such as multimedia, image, video and audio including music content or data (sections 0088-0090; also sections 0020 and 0055).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Moriai with the teachings of Takano. One having ordinary skill in the art would have found it motivated to utilize the use of portable terminal to view the selected content recommendation information of multimedia such as image, vide or music, song as disclosed (Takano's sections 0088-0090), into the system of Moriai for the purpose of distributing methods for selecting the content recommendation over a portable terminal, thereby, enabling the user to select/search and view the desired content over the network (Takano's sections 0002 and 0013).

Claim 10 is essentially the same as claim 9 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 9 hereinabove.

With respect to claim 18, Moriai teaches a data processing system having a first data processing apparatus and a second data processing apparatus (see fig. 1,

distribution server, first cellular phone and second cellular phone, data processing apparatuses for receiving and transmitting data or music data from distribution server),

wherein said first data processing apparatus (first cellular phone user 1) comprises:

a first reproducing unit configured to reproduce a plurality of content data items (reproduction unit: section 0024, reproducing a plurality of music content data items: section 0020);

a first control unit configured to detect a reproduction status of each content data item being reproduced by at said reproducing unit (each cellular phone has a control unit including detector unit for detecting reproducing processing including reproduction status of music content data item: sections 0024-0027, 0175 and 0180-0181), and to select a content data item from said plurality of content data items depending on a reproduction status of said content data item (selecting or outputting the content of music from a cellular phone: sections 0097 and 0159-0161); and

a first communication unit configured to transmit to the second data processing apparatus (from fig. 1, distribution server including data recording or reproducing device having a communicate unit for transmitting/distributing the music content data item to cellular phone: sections 0025, 0057 and 0060-0061);

wherein said second data processing apparatus (cellular phone user 2) comprises:

a second reproducing unit configured to reproduce a plurality of content data items; a second control unit configured to detect a reproduction status of each content

data item being reproduced at said reproducing unit, and to select a content data item from said plurality of content data items depending on a reproduction status of said content data item; and a second communication unit configured to transmit to the second data processing apparatus (a second cellular phone as the same as the first cellular phone: reproduction unit: section 0024, reproducing a plurality of music content data items: section 0020; each cellular phone has a control unit including detector unit for detecting reproducing processing including reproduction status of music content data item: sections 0024-0027, 0175 and 0180-0181; selecting or outputting the content of music from a cellular phone: sections 0097 and 0159-0161; and from fig. 1, distribution server including data recording or reproducing device having a communicate unit for transmitting/distributing the music content data item to cellular phone: sections 0025, 0057 and 0060-0061).

Moriai teaches reproducing a plurality of music content data items and controlling and detecting reproduction status of music content data, selecting the music content data and transmitting or distributing the music content data. Moriai does not clearly teach recommendation content data item and a list, which shows said selected content data item.

However, Takano teaches using portable terminal to view the selected content recommendation such as multimedia, image, video and audio including music content or data (sections 0088-0090; also sections 0020 and 0055).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Moriai with the teachings

of Takano. One having ordinary skill in the art would have found it motivated to utilize the use of portable terminal to view the selected content recommendation information of multimedia such as image, vide or music, song as disclosed (Takano's sections 0088-0090), into the system of Moriai for the purpose of distributing methods for selecting the content recommendation over a portable terminal, thereby, enabling the user to select/search and view the desired content over the network (Takano's sections 0002 and 0013).

With respect to claim 19, Moriai teaches wherein said communication unit communicates with another data processing apparatus via an ad hoc network (fig. 1; sections 0004-0006 and 0051-0053).

With respect to claim 20, Moriai teaches wherein said control unit transfers said list to a plurality of data processing apparatuses on said ad hoc network (fig. 1; sections 0004-0006 and 0051-0053; abstract, sections 0024-0027).

Claim 22 is essentially the same as claim 2 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 2 hereinabove.

Claim 23 is essentially the same as claim 3 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 3 hereinabove.

Claim 24 is essentially the same as claim 4 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 4 hereinabove.

Claim 25 is essentially the same as claim 5 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 5 hereinabove.

Claim 26 is essentially the same as claim 6 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 6 hereinabove.

Claim 27 is essentially the same as claim 8 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 8 hereinabove.

Claim 28 is essentially the same as claim 19 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 19 hereinabove.

Claim 29 is essentially the same as claim 20 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 20 hereinabove.

Claim 30 is essentially the same as claim 21 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 21 hereinabove.

Claim 31 is essentially the same as claim 22 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 22 hereinabove.

Claim 32 is essentially the same as claim 23 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 23 hereinabove.

Claim 33 is essentially the same as claim 24 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 24 hereinabove.

Claim 34 is essentially the same as claim 25 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 25 hereinabove.

Claim 35 is essentially the same as claim 26 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 26 hereinabove.

Claim 36 is essentially the same as claim 27 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 27 hereinabove.

Claim 37 is essentially the same as claim 28 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 28 hereinabove.

Claim 38 is essentially the same as claim 29 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 29 hereinabove.

Claim 39 is essentially the same as claim 30 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 30 hereinabove.

Conclusion


8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH LY, whose telephone number is (571) 272-4039 or via e-mail: ANH.LY@USPTO.GOV (written authorization being given by Applicant(s) - MPEP 502.03 [R-2]) or fax to (571) 273-4039 (unofficial fax number direct to examiner's office). The examiner can normally be reached on TUESDAY – THURSDAY from 8:30 AM – 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **John Breene**, can be reached on **(571) 272-4107**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Any response to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, or faxed to: **Central Fax Center: (571) 273-8300**


Cam Y Tuong
Primary Examiner

ANH LY 
DEC. 17th, 2007